

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**JOHN AND LINDA MOONS dba
DALARNA FARMS PARTNERSHIP
Facility #60126**

Henry County, Iowa

ADMINISTRATIVE CONSENT
ORDER

NO. 2011-AFO- 22

TO: John and Linda Moons
Dalarna Farms Partnership
5186 Avenue 272
Visalia, California 93277

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and John and Linda Moons dba Dalarna Farms Partnership (Dalarna Farms) for the purpose of resolving a construction permit violation at an animal feeding operation located at 2387 240th Street, New London, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements: **Relating to legal requirements:**

Ryan Stouder, Field Office 6
Iowa Department of Natural Resources
1023 W. Madison
Washington, Iowa 52353-1623
Phone: 319/653-2135

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure

RECEIVED

AUG 23 2011

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JOHNAND LINDA MOONS dba DALARNA FARMS PARTNERSHIP

compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 and Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. This animal feeding facility was formerly operated under the name New London Dairy, LLC and was purchased by Dalarna Farms on September 11, 2003. On April 1, 2009, Dalarna Farms ceased operating at the facility. The livestock was sold to Etcher Family Farms, L.L.C. and Etcher Family Farms, L.L.C. is leasing the facility from John Moons with Dalarna Farms. Etcher Family Farms, L.L.C. manages the day-to-day operations of the facility. This facility is a animal confinement feeding operation located at 2397 240th Street; New London, Iowa (SE ¼ of the SE ¼ of Section 8, T-71-N, R-5-W, Henry County, Iowa). The facility has three confinement buildings with an earthen manure storage structure that is designed to serve 1,600 dairy cows. There had previously been an open feedlot at the facility, but all of the open feedlot cattle have been moved into confinement buildings. The open feedlot still contains manure from stockpiles.

2. Dalarna Farms has been issued two previous administrative consent orders for violations of the animal feeding regulations that occurred at the facility. On January 7, 2008, DNR and Dalarna Farms entered into Administrative Consent Order No. 2008-AFO-02. The violations in the administrative consent order included failure to timely submit a Manure Management Plan update and compliance fees. The administrative consent order assessed a \$2,000.00 penalty. On September 13, 2009, DNR and Dalarna Farms entered into Administrative Consent Order No. 2009-AFO-36. The violations in the administrative consent order included a prohibited discharge and general water quality violations. The administrative consent order assessed a \$1,750.00 penalty.

3. On July 27, 2009, Ryan Stouder, DNR Field Office 6 environmental specialist, conducted an inspection at the facility to determine compliance with the 2009 administrative consent order. During the inspection Mr. Stouder observed the construction of a new concrete structure between the west building and the earthen storage lagoon. The structure's purpose was for sand bedding to settle out and liquid dairy manure to flow to an earthen storage lagoon. At the time of the inspection, the structure was partially constructed. Mr. Stouder spoke with Steve Carlson during the inspection. Mr. Carlson had formerly been part of Dalarna Farms and had managed the facility when the animals were owned by Dalarna Farms. Etcher Family Farms, L.L.C. hired Mr. Carlson to continue as the facility manager once the animals were purchased by Etcher Family Farms, L.L.C. Mr. Carlson stated that the facility had not obtained a construction permit prior to beginning construction on the new manure handling structure. On July 28, 2009, Mr. Stouder spoke to DNR's animal feeding permitting section and confirmed this new manure handling

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JOHNAND LINDA MOONS dba DALARNA FARMS PARTNERSHIP

structure should have been permitted. On that same day, Mr. Stouder contacted Mr. Carlson and informed him the new manure handling structure needed a construction permit. Mr. Stouder informed Mr. Carlson that no further construction could occur until a construction permit was obtained.

4. On August 17, 2009, a Notice of Violation letter was issued to Dalarna Farms for failing to obtain a construction permit prior to the construction of the new manure handling structure. The letter required that the construction permit application be submitted by September 1, 2009. The construction permit application was submitted in December 2009. The application was missing information and on December 16, 2009, DNR sent a preliminary disapproval of the construction permit to Etcher Family Farms, L.L.C. The disapproval was based on that fact that the required information was never submitted and that the application did not pass the county's matrix evaluation. The preliminary disapproval was not contested and therefore became a final decision.

5. On July 30, 2010, Mr. Stouder conducted an earthen manure storage structure inspection at the facility. Mr. Stouder met with Scott Etcher, Etcher Family Farms, L.L.C.'s representative. During the inspection, Mr. Stouder noted that the manure/sand settling structure was constructed and was operating. Mr. Stouder explained to Mr. Etcher that a construction permit had not been obtained for the new manure/sand handling structure.

6. On August 6, 2010, Mr. Stouder issued a Notice of Violation letter to Dalarna Farms and Etcher Family Farms, L.L.C. for the violations discovered during Mr. Stouder's inspection. The violations included failing to obtain a construction permit. The letter informed the parties that the matter was being referred for further enforcement.

7. In December 2010, DNR issued an as-built construction permit to Dalarna Farms for the manure/sand handling structure.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 459.303(1)(a)(1) and 567 IAC 65.7(1)(b)(2) require that a confinement feeding operation obtains a construction permit prior to constructing, installing or modifying a confinement building or a formed manure storage structure at a confinement feeding operation. A new manure/sand settling structure was constructed and being used at the facility without obtaining a construction permit. The above-facts indicate a violation of this provision.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JOHNAND LINDA MOONS dba DALARNA FARMS PARTNERSHIP

V. ORDER

THEREFORE, it is hereby ordered and Dalarna Farms agree to do the following:

1. If they have not already done so, Dalarna Farms shall submit an updated manure management plan that includes the manure/sand settling structure within 30 days of the date the Director signs this administrative consent order; and
2. Dalarna Farms shall pay a penalty of \$5,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code sections 455B.191 and 459.603 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.
2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$5,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Dalarna Farms gained an economic benefit over other facilities that properly obtained a construction permit. Dalarna Farms was able to avoid the costs of hiring an engineer to be on site during during critical points of construction. Dalarna Farms was able to avoid all engineering costs. It is estimated the economic benefit is at least \$1,000.00 and that amount is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JOHNAND LINDA MOONS dba DALARNA FARMS PARTNERSHIP

that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. By not having an engineer present during the critical points of construction, the DNR has no way of ensuring the structure was built properly. Failure to comply with the construction permit conditions threatens the integrity of the animal feeding operations permitting program. Based on the above considerations, \$2,000.00 is assessed for this factor.

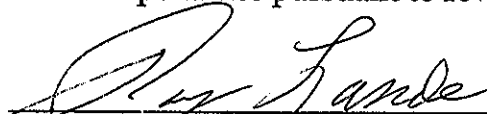
Culpability – Dalarna Farms has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to Iowa law. In 2009, facility representatives were told the structure needed a construction permit and that construction should not continue until a construction permit was obtained. Based on the above considerations, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Dalarna Farm. For that reason, Dalarna Farms waives the right to appeal this administrative consent order or any part thereof.


VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in the administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



ROGER LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 25th day of
August, 2011.



John and Linda Moons dba
DALARNA FARMS PARTNERSHIP

Dated this 10 day of
August 2011.

#60126; Kelli Book; Field Office 6; Ken Hessenius; Gene Tinker; EPA; VIII.A.2